

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICIA LYNN SMITH and RASHID  
DESHAWN DEARY-SMITH,

Plaintiff,

v.

CITY OF SACRAMENTO et al,

Defendant.

No. 2:24-cv-02268-DC-SCR

FINDINGS AND RECOMMENDATIONS TO  
DENY MOTION FOR DEFAULT  
JUDGMENT

Plaintiffs' motion for a default judgment against Defendants County of Sacramento, Noah Louis Phillips, Kelly Michael Jobe, Nicholas Bo Johnson, Michael Allen Savage, Alicia Derrico, Jesse R. Saucedo, District Attorney's Office, and Sacramento County Sheriff Department (ECF No. 31) is before the undersigned pursuant to Local Rule 302(c)(19).

Federal Rule of Civil Procedure 55 governs entry of default and applications for default judgment. When a party against whom a plaintiff seeks affirmative relief has failed to plead or otherwise defend against such action, and that this failure is shown by affidavit or otherwise, the clerk must enter the party's default. Fed. R. Civ. P. 55(a). Upon entry of default, the complaint's factual allegations regarding liability are taken as true, while allegations regarding the amount of


1 damages must be proven. *Dundee Cement Co. v. Howard Pipe & Concrete Prods.*, 722 F.2d  
2 1319, 1323 (7th Cir. 1983) (citing *Pope v. United States*, 323 U.S. 1 (1944); *Geddes v. United*  
3 *Fin. Group*, 559 F.2d 557 (9th Cir. 1977)); see also *DirectTV v. Huynh*, 503 F.3d 847, 851 (9th  
4 Cir. 2007); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

5 The motion asserts that the targeted Defendants “failed to answer or defend against the  
6 complaint.” ECF No. 31 at 2. These Defendants have defended against the action by filing  
7 motions to dismiss the complaint. ECF Nos. 24, 28. Accordingly, the clerk declined to enter  
8 default against these Defendants the day after Plaintiffs filed their motion for default judgment.  
9 ECF No. 32. Plaintiffs have since filed affidavits asserting that these Defendants did not defend  
10 against the First Amended Complaint “within the time allowed by California Laws.” ECF Nos.  
11 37 at 2, 38 at 2. To the extent that the motions to dismiss this action are untimely, Plaintiffs have  
12 waived such defect by not requesting default before Defendants filed such motions.

13 **IT IS HEREBY RECOMMENDED** that Plaintiffs’ motion for default judgment be  
14 DENIED.

15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
17 days after these findings and recommendations are filed, any party may file written objections  
18 with the Court. A document containing objections should be titled “Objections to Magistrate  
19 Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed  
20 within 14 days after service of the objections. The parties are advised that failure to file  
21 objections within the specified time may, under certain circumstances, waive the right to appeal  
22 the District Court’s order. See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

23  
24 Dated: March 27, 2025

25   
26 Hon. Sean C. Riordan  
27 U.S. MAGISTRATE JUDGE  
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